



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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March 14, 2014

Ref: 8EPR-EP

Lindsay Patterson
Division of Water Quality
Wyoming Department of Environmental Quality
Herschler Building 4W
122 W. 25th Street
Cheyenne, WY 82002

Dear Ms. Patterson:

The U.S. Environmental Protection Agency (EPA) has reviewed the Wyoming Department of Environmental Quality's (WDEQ) January 28, 2014 public notice of the "Categorical Use Attainability Analysis for Recreation" and "Response to Comments for Comment Period Ending September 30, 2013." The UAA uses Geographic Information System (GIS) data to identify streams with insufficient flow to attain a primary contact recreation use.¹ In general, the EPA's preliminary thinking is that WDEQ's approach would be consistent with 40 CFR § 131.10(g)(2). We appreciate the efforts of WDEQ to address our comments throughout this project. We note that the EPA administers the Clean Water Act (CWA) in Indian country as defined at 18 U.S.C. 1151, which includes all lands, regardless of ownership, within the exterior boundaries of the Wind River Indian Reservation. Therefore, our comments below refer to waters located outside of the Wind River Indian Reservation.

The EPA regulations at 40 CFR part 131 interprets and implements CWA section 101(a)(2) and 303(c)(2)(A) to require that the uses specified in section 101(a)(2) of the CWA, which includes "recreation in and on the water," are presumed attainable unless a state or tribe affirmatively demonstrates through a UAA that the use is not attainable as provided by one of the six factors at 40 CFR § 131.10(g).² To support an attainability decision under 131.10(g), the EPA's suggested approach is for states to also consider a suite of factors, such as actual use, existing water quality, water quality potential, access, recreational facilities, location, safety considerations, and physical conditions.³

Consistent with 40 CFR § 131.10(g)(2), the scope of the UAA is limited to low flow streams (mean annual flow < 6 cubic feet/second). The UAA concludes that of Wyoming's 112,890 stream miles,

¹ Protects humans from gastrointestinal illness where there is the potential for ingestion or immersion. See *Wyoming Water Quality Rules and Regulations*, Chapter 1, Section 2.

² See 63 Fed. Reg. 36742, 36749 (July 7, 1998) and 78 Fed. Reg. 54518, 54522 (September 4, 2013).

³ See 63 Fed. Reg. 36742, 36756 (July 7, 1998).

92,712 stream miles (82%) do not have sufficient flow to support primary contact recreation. This is not surprising, considering Wyoming is the third driest state in the nation. However, consistent with the EPA's "suite of factors" guidance, Wyoming also developed an innovative approach using GIS data layers representing populated places, schools, and recreation areas to determine if there were streams that should be protected for primary contact recreation despite low flow, in order to protect Wyoming's residents, and in particular, its children, from gastrointestinal illness. Although Wyoming is the least populous state in the United States, almost 7,000 miles of low flow streams are proposed for primary contact recreation based on this analysis.

The UAA incorporates an appropriate level of conservatism for a state-wide approach. In addition, the site-specific UAA process will remain a tool for the state to refine recreational uses over time. This refinement of designated uses is an integral part of any state water quality program. However, the EPA recognizes that Wyoming's UAA approach may not be appropriate in all parts of the United States considering our hydrologic diversity.

In summary, the EPA's preliminary thinking is that WDEQ's draft approach for identifying streams with insufficient flow to support a primary contact recreation use would be consistent with 40 CFR § 131.10(g)(2). The EPA will consider the public comments and the final submission of the state prior to making a final decision under CWA § 303(c). If you have any questions, please call Tonya Fish on my staff at (303) 312-6832.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sandra Spence".

Sandra Spence, Chief
Water Quality Unit